

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

Edward C. Knittel,
Plaintiff,

vs.

Internal Revenue Service,
Defendant.

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Case Number _____

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**COMPLAINT FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS
SEEKING DECLARATORY AND INJUNCTIVE RELIEF**

JURISDICTION

1. This court has subject matter jurisdiction to hear this case under 28 U.S.C. § 1331. The federal statutes at issue in this case include the Declaratory Judgment Act, 28 USC § 2201, the Injunctive Relief Act, 28 USC § 2202, Plaintiff's rights under the Administrative Procedures Act, 5 USC §§ 552, 552a and 702; and 26 USC §§ 6103 and 6110, and 28 USC § 1361; as well as his due process and equal protection rights under the 14th Amendment to the U. S. Constitution.

2. Plaintiff Edward C. Knittel resides within the territorial jurisdiction of the Western District of Tennessee Eastern Division: His postal address is P. O. Box 211 Trenton, Tennessee 38382, and his telephone number is 731-686-0803.

3. Defendant Internal Revenue Service, an agency of the United States government, may be served with process at the following address: Internal Revenue Service, 1111 Constitution Avenue N. W., Washington, DC 20224. This court has personal jurisdiction over the Defendant, a federal government agency, because it maintains a large office in Memphis, Tennessee as well as an office in Jackson, Tennessee. Venue for this case lies in the district where Plaintiff resides.

4. The United States attorney, who as a party, is due service of the summons and complaint pursuant to Fed. R. of Civ. P. Rule 4(i), 800 Federal Building, 167 N. Main, Memphis, Tennessee 38103, and whose telephone numbers are 901-544-4321 (Memphis) and 731-422-6220 (Jackson).

SUMMARY OF THE CASE

5. This instant action arises from the denial of a Freedom of Information Act (FOIA) requests made by Plaintiff under 5 USC 552 and 552a to the IRS disclosure office at Nashville, Tennessee dated July 26, 2007, a copy of the request and response letters are attached hereto as Exhibits "A" and "B". Subsequently Plaintiff appealed the disclosure officer's decision which was denied. A copy of the appeal and appeal decision are attached as Exhibit "C" and "D". Plaintiff seeks judicial review of that decision.

6. Further, this action arises from the denial of a request for an Office Examination under 26 CFR 601.105(b) requesting that the case be transferred to a local office for an interview. This request was made in response to a 30 Day Letter. A copy of that 30 Day Letter and Plaintiff's response are attached as Exhibits "E" and "F". The requested examination was denied by the issuance of a Deficiency Notice, a copy of which is attached as Exhibit "G". Plaintiff appealed this action to IRS Appeals but has not received a timely decision. A copy of that appeal is attached as Exhibits "H" and the registered receipt as Exhibit "I". Plaintiff seeks judicial review and declaratory relief to determine his right to the requested office interview.

7. Further, this action arises from the apparently unauthorized execution of a substitute for return for the year 2002 under the authority of 26 USC 6020(b). Plaintiff

obtained through a FOIA request a document labeled "IRC Section 6020(b) ASFR Certification", a copy of which is attached as Exhibit "J". Plaintiff subsequently sent a FOIA request for a copy of the delegation order mentioned in the "Certificate". The Plaintiff's request and the Defendant's response letter are attached as Exhibits "K" and "L". The provisions of 5 USC 552a(d)(2) do not apply to tax records because of the exclusion found at 26 USC 7852(e) therefore Plaintiff has no administrative remedy and seeks judicial review of these documents apparently executed without a valid delegation of authority order.

8. Further, this action arises from the need for Plaintiff to obtain certified documents under seal via FOIA and Privacy Act (PA) requests for use in litigation. Neither FOIA nor the Privacy Act provide for certification of documents however the Internal Revenue Manual provides for certification under seal at § 11.3.6, a copy of which is attached as Exhibit "M". The IRS routinely issues certification under seal of documents to any agency requester but denies the same right to private individuals based on the aforementioned agency rule. Plaintiff seeks judicial review of Defendant's certification policy and Plaintiff's right to certified documents based on statutory and Constitutional law.

FIRST CAUSE OF ACTION: DENIAL OF FOIA/PRIVACY ACT REQUEST

9. There exists an ongoing dispute between the parties as to the extent of Plaintiff's tax liabilities for the years 2002 and 2003.

10. Plaintiff expects to be involved in an administrative hearing some time in the future under 26 USC § 6320 and/or § 6330 as well as judicial proceedings related thereto

and is attempting to accomplish informal pre-hearing, pre-litigation discovery by way of FOIA/ Privacy Act requests along with requests under 26 USC § 6103.

11. Plaintiff's FOIA/PA requests would provide him with information concerning postings made to his Individual Master File and the underlying documents to those postings as to whether they are factually and procedurally correct and entered with proper authority.

12. Because the courts presume IRS claims are correct, Welch v. Helvering, 290 U.S. 111 (1933) and Tax Court Rule 142, the Plaintiff bears the burden of presenting evidence of error of those claims against Plaintiff. Yet that evidence is possessed by the IRS, and in the absence of litigation and the discovery process, the only means for Plaintiff to obtain this necessary evidence is through FOIA/Privacy Act requests.

13. Plaintiff has been injured and damaged by the IRS's refusal to provide him with documents that would allow him to determine whether the IRS staff in his dispute have acted under proper authority, including the limitations imposed on that authority by statute, regulation and published policy, including, but not limited to, preparing an unauthorized income tax return on behalf of Plaintiff.

14. A dispute has now arisen between Plaintiff and Defendant over the purposes and purview of the Administrative Procedures Act. Plaintiff contends that the Act was meant to empower citizens to obtain evidence of government error before a government agency proceeds to a collection action or formally prosecutes the citizen in a court of law. The IRS disputes that contention by hiding under a cloak of secrecy.

15. Plaintiff contends that documents relating to the official duties and authority of employees do not properly fall under the claimed FOIA exemption (b)(6) and thus should

be disclosed, or at the minimum, the disclosable documents should be segregated from non-disclosable. The IRS disputes this contention and has summarily refused to disclose any of the relevant documents concerning duties and authorities of employees.

**SECOND CAUSE OF ACTION: DENIAL OF DUE PROCESS RIGHT TO AN
OFFICE EXAMINATION INTERVIEW**

16. In response to citizen complaints about IRS's continual violation of due process, Congress enacted the Restructuring and Reform Act of 1998, 112 Stat. 685. Along with other regulations arising from that restructuring is 26 CFR 601.105(b), which gave citizens thought to have unresolved tax liabilities a meaningful opportunity to participate in the examination process.

17. This statute and codified regulation provide for an office examination by interview at an office near the affected party. Plaintiff is informed and believes and thereon alleges that this examination falls within the guidelines set forth in 5 USC 554 through 557 and is a pre-appeals procedure.

18. Plaintiff has been harmed and injured and damages by the Defendant's failure to grant Plaintiff the requested office examination interview leaving him without any evidence or testimony at the examination level to present to the Appeals Office. As a result Defendant's Appeals Office would wrongfully presume Plaintiff has no evidence or testimony to present at examinations or otherwise neglected to take advantage of his procedural rights at the examination level, a presumption that would further injure and harm Plaintiff.

19. Defendant not only improperly denied Plaintiff's timely request for an office examination interview at a local office but also failed to give Plaintiff due process Notice

as required by 5 USC § 555(e). By going straight to issuing a Deficiency Notice, Defendant denied Plaintiff all of the pre-Tax Court procedures provided for in 26 CFR 601.105 and 106. The Defendant's denial of procedural due process to Plaintiff has injured and harmed Plaintiff.

20. The Defendant's decision to move forward with a Deficiency Notice, without affording Plaintiff an opportunity to participate in the examination process, violated both the Restructuring and Reform Act of 1998, 112 Stat. as viewed through 26 CFR 601.105(b), and Plaintiff's procedural due process rights under the 5th Amendment to the U.S. Constitution. The Defendant's own *Publication 1*, enclosed with the 30-Day Letter sent to Plaintiff, confirms that right. A copy of *Publication 1* is attached hereto as Exhibit "N".

**THIRD CAUSE OF ACTION: ERRONIOUS OR UNAUTHORISED
DOCUMENTS ENTERED INTO PLAINTIFF'S TAX RECORDS**

21. Plaintiff seeks a declaration from this court that the § 6020(b) Certification (Exhibit "J") is void as are all the documents based upon it, because it is not authorized. Plaintiff seeks judicial findings that the delegation of authority order, on which the Certification depends, does not exist, as shown in Exhibit "L". Accordingly, Plaintiff requests injunctive relief from the court to expunge the documents from Plaintiff's tax records.

22. Title 26 USC § 7852(e) eliminates the administrative remedy found in 5 USC § 552a(d)(2). Plaintiff knows of no other appeal mechanism at the administrative level. Prior to filing this suit, Plaintiff attempted to exhausted his administrative remedies by sending a complaint to TIGTA, a copy of which is attached as Exhibit "O". However that

office is not obligated to render a decision or to take action nor have they done so. The TIGTA response letter to my complaint is attached as Exhibit "P". Defendant has not acknowledged receipt of or responded to Plaintiff's complaint sent to them by TIGTA.

23. Therefore, having exhausted his administrative remedies, Plaintiff seeks judicial review under 5 USC §§ 702, 706 and 28 USC § 1361. If these statutes are not sufficient to grant review and relief, then Plaintiff seeks judicial review under the 5th amendment due process clause.

24. If Defendant claims that a delegation order does exist, then the purpose of this suit is to bring that order into evidence through discovery so that it can be examined to see if it authorizes the particular return that was executed under its authority. Examination records indicate that Defendant has prepared an Individual Income Tax Return Form 1040.

FOURTH CASUSE OF ACTION: PLAINTIFF'S RIGHT TO OBTAIN CERTIFIED DOCUMENTS

25. A dispute has arisen between Plaintiff and Defendant over whether the Defendant has any obligation to provide certified documents to Plaintiff under seal. Plaintiff requested certification in a FOIA request which was denied. A copy of that denial is attached as Exhibit "Q". Plaintiff did not appeal this decision to IRS Appeals because the decision was procedurally correct and according to IRS policy. The Appeals Office does not have authority to review the constitutionality of IRS policy. Therefore Plaintiff seeks judicial review of that policy.

26. The Internal Revenue Manual at § 11.3.6 provides for certification under seal to other agencies and its own attorneys, but not to private citizens. Plaintiff contends

that Defendant policy is capricious, arbitary and an abuse of discretion under 5 USC 706(2)(A); and a violation of his due process and equal protection rights under the 14th amendment.

27. Plaintiff would ask this court to enjoin the Defendant to provide him with documents under seal, so that he will have adequate evidence to introduce in court to defend his position. Defendant's one sided provisions for certification under seal are fundamentally unjust. This is particularity true in respect to the certification of the non-existence of a record.

28. One of the most fundamental rights of the people is to obtain court admissible evidence in their defense, especially from public records.

WHEREFORE, Plaintiff prays for judgment against the Defendant and seeks relief as follows:

1. Injunctive relief ordering Defendant to disclose the documents requested in Exhibit "A".

2. Injunctive relief ordering Defendant to abate Plaintiff's 2003 Deficiency Notice (Exhibit "G") and remand that tax case back to the IRS Examinations Office for an office examination interview at a local office, as per 26 CFR 601.105(b).


3. Injunctive relief ordering Defendant to remove from its records the unauthorized "IRC Section 6020(b) ASFR Certification" (Exhibit "J") and all records dependent on its authority.

4. Declaratory relief declaring Plaintiff's right to have documents from the IRS in a form admissible in court.

5. For costs of this suit.

6. Such other and further relief as to which Plaintiff may be entitled.

Respectfully submitted this 28th day of November, 2007.



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This document was prepared with the assistance of Tennessee attorney Michael A. S. Guth, Ph.D., J.D., phone (865) 483-8309. Dr. Guth does not represent the party and will not be entering an appearance in this action.